**Confusion Regarding 90 Days**

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In the backdrop of the President’s letter asking ECP to consult him on the date for elections as under Article 48(5) he was under obligation to announce the election date, the Supreme Court Bar Association, filed a petition in the apex court praying that ECP may be directed to hold elections within ninety days of the dissolution of the National Assembly as is obligatory under Article 224(2). The PTI and JI have also approached the apex court with a similar request.

What would be the decision of the apex court on these petitions cannot be predicted however I feel it imperative to let the readers know about my perception on the issue. I think the position taken by the President is not applicable in this case. The President did not dissolve the Assembly on his own but on the advice of the Prime Minister. Article 48(5) could have been invoked had he dissolved the assembly on his own under Article 58(2). The President can dissolve the assembly as per Article 58(2) in his discretion only when a vote of no-confidence is passed against a prime minister and no other member commands the majority of the house. In that case, he can set a date for the election and appoint the caretaker cabinet for the interim period.

However, if the President dissolves the National Assembly in terms of Article 58(1) on the advice of the prime minister, he cannot unilaterally appoint a date for election nor can appoint a caretaker cabinet without adopting the procedure provided in Article 224-1 A. Moreover, the amendments to the election laws by the PDM government have stripped the President of the power to fix the election date.

The best thing in the national interest would be to allow the process to be completed as envisaged by the ECP in the light of its constitutional and legal obligations.

Under normal circumstances, the elections should have been held within 90 days as per Article 224(2) as prayed by the Supreme Court Bar Association (SCBA), PTI and JI in their petitions to the SC. But the question is whether Article 224(2) is the ultimate and conclusive statutory provision in regards to holding the elections within 90 days or whether other Articles of the Constitution and Acts of the Parliament also have any relevance in this regard.

According to Article 51 (5) of the Constitution, the seats of the National Assembly to each province and the federal capital shall be allocated on the basis of population in accordance with the last preceding census officially published. So in the light of this Article, after the approval of census results by CCI it was constitutionally obligatory for ECP to carry out new delimitation of the constituencies and then hold the elections. Section 17(2) of the Election Act says “The Commission shall delimit the constituencies after every census is officially published”

Ostensibly it seems that the ECP has acted in accordance with its constitutional and legal obligations. As far as strict adherence to Article 224(2) is concerned one needs to also have a look at Article 254 of the constitution which reads “When any act or thing is required by the constitution to be done within a particular period and it is not done within that period the doing of the act or thing shall not be invalid or otherwise ineffective by reason only that it was not done within that period” To a commoner like me it clearly means that if for any valid reasons compliance with Article 224(2) is not possible and action is taken accordingly it would not be invalid and ineffective. Article 51(5) of the constitution and section 17(2) of the Election Act 2017 do provide the justification for going beyond the 90 days stipulated in Article 224(2). The process does not involve a breach of the constitution. It is a matter of common sense as well.

Interestingly, PPP, which was part of the PDM government and involved in the decision-making process of CCI which approved the census knowing fully well that consequent upon this decision the ECP will have to make fresh delimitation of the constituencies, has also taken a u-turn and demanded that the elections should be held within ninety days. That is what is called playing to the gallery.

As is evident by the foregoing discussion Article 224(2) is not absolute and needs to be read with Article 254, Section 17(2) of the Election Act 2017 as well as Article 51(5) to draw a conclusion. My conclusion is that nothing unconstitutional and illegal has been done and the whole process has due constitutional and legal legitimacy. The President, SCBA, PTI, JI and other political elements who are insisting on holding elections within 90 days are trying to create confusion by invoking the constitutional Article which is not relevant to the given situation.

My humble submission to SC would be that it should restrain itself from entertaining issues related to the political domain and let them be resolved by the parliament or the politicians among themselves. The fate of the SC decision regarding elections in Punjab is before us. It could not be implemented because the other requirements to fulfil this obligation could not be materialized.

The circumstances in the present case are also the same. Therefore, SC, even if it decides to hear the petitions, should not pass any order, which cannot be implemented as prayed by the petitioners and wrongly quoted Article 48(5) by the President as it could lead to yet another embarrassment for it. The best thing in the national interest would be to allow the process to be completed as envisaged by the ECP in the light of its constitutional and legal obligations. Heavens are not going to fall with the legitimate delay in the date of elections. The SC in regard to the Punjab elections had usurped the powers of ECP in regard to the announcement of the date and schedule of the election. It surely did not have constitutional powers to do that. As a custodian of the constitution, it should avoid doing things which constitute a breach of the constitution. It has already given verdicts which not only vitiated the spirit of the constitution but also led to deepening the political crisis in the country. Unfortunately, the precedents set by the apex court under the stewardship of the current CJ have lowered the prestige of the apex court in the eyes of the people.

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